

**State of Delaware**

**Public Integrity Commission**



**ETHICS**  
**TRANSPARENCY IN GOVERNMENT**

**ANNUAL REPORT**  
**2019**

*Bonnie Smith, Chair*  
*William F. Tobin, Jr., and Michele Whetzel, Vice-Chairs*

*Commissioners*  
*Andrew Manus \* F. Gary Simpson \* Rourke Moore*

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# STATE PUBLIC INTEGRITY COMMISSION

## Annual Report - 2019

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# *I. Mission:*

***Administer, interpret and enforce the Code of Conduct (ethics); Financial Disclosure; Dual Compensation; and Lobbying Laws.***

## *Jurisdictional History*

- ✓ **1991 – State Ethics:** Executive Branch officers and employees, including casual/seasonal; (over 52,000); non-legislative elected officials; State Board and Commission appointees (In 2015, over 300 Boards and Commissions).
- ✓ **1993 – Local Ethics:** 57 local governments' employees, officers, elected officials, and Board and Commission appointees, unless they submit a Code for the Commission's approval. (As of 2015, only 8 have an approved Code, leaving PIC with 49 local jurisdictions).
- ✓ **1994 – Dual Compensation:** State and local employees and officials with a second elected or paid appointed job in government.
- ✓ **1995 – Financial Disclosure:** elected officials; State candidates; Judges, Cabinet Secretaries, Division Directors and equivalents. (2015: 329 officers filed).
- ✓ **1996 – Lobbying:** State lobbyists registration, authorization and expense reports (2015: 343 lobbyists; 1015 organizations; over 3000 expense reports).
- ✓ **2000 – Ethics:** School Districts and Boards of Education
- ✓ **2001 – Ethics:** Charter School Boards of Education
- ✓ **2010 – Organizational Disclosures:** State elected officials & candidates must disclose private organizations if they are Board or Council members.
- ✓ **2010 – Newark Housing Authority:** Newark's Code of Conduct included the Authority, but the General Assembly changed the law to make it a State agency so that PIC would have jurisdiction.
- ✓ **2012 – Lobbyists:** Report within 5 business days legislative bill number or administrative action number or title on which they are lobbying. Report weekly on lobbyists' legislative/administrative action.
- ✓ **2014 – Lobbyists:** Successfully proposed legislation to charge lobbyists a fee for failure to file their expense reports in a timely manner.



# PUBLIC INTEGRITY COMMISSION

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## Commission Structure

### Appointments, Qualifications and Compensation

- 7 Citizens are the “public eye” on Government Ethics
- Nominated by the Governor; confirmed by the Senate
- Elect their own Chair
- Cannot be:
  - ✓ Elected or appointed official – State, Federal or Local
  - ✓ Holder of political party office
  - ✓ An officer in a political campaign
- Generally appointed from all three counties
- Terms – one full 7-year term; may serve until successor is appointed and confirmed
- Vacancies filled just as original appointments
- Pay - \$100 each official duty day; reimbursement of reasonable and necessary expenses

## ***II. Commission Structure and Biographies of Commissioners and Staff***

### ***A. Commission Appointee Status***

In 2019, the Commission said goodbye to Commissioners Jeremy Anderson, Esq., Kyle Evans Gay, Esq. and Andrew Gonser, Esq. The remaining members were excited to welcome new Commissioners, F. Gary Simpson and Rourke Moore. Of the Commission's seven members, two members represent New Castle County, two members represent Kent County and two members represent Sussex County. The Commission currently has one vacancy.

### ***B. Commission Staff***

The Commission had a two-person full-time staff from 1995 – 2017, an attorney and an administrative assistant, responsible for maintaining day-to-day operations. In early 2017, the Commission decided not to fill a vacancy for the administrative assistant position due to efficiencies in electronic recordkeeping and automated processes.

The Commission's attorney, beyond legal duties, conducts training, prepares Strategic Plans, Budgets, and performs other non-legal duties. The current Commission Counsel has served for six years.

## ***C. Organizational Chart***



## ***D. Biographies of Commissioners***



***Bonnie O'Day Smith  
Chair***

Ms. Smith was appointed to the Public Integrity Commission on March 26, 2014. Her term expires on March 26, 2021. Ms. Smith was elected Vice-Chair of Personnel in November 2015. In 2017, Ms. Smith was elected Chair and served in that position until 2020.

Ms. Smith retired from Sussex County government in November 2013, after 44 years of dedicated service. During her employment, Ms. Smith worked her way up the career ladder from an entry level position to become the Director of Data Processing. Ms. Smith developed the computer software used by all County employees.

Ms. Smith received her Associates Degree from Delaware Technical & Community College in Georgetown and was a member of the school's first graduating class. During the course of her career, she also received several training certificates from IBM.

Ms. Smith has previously served on the Delaware Technical and Community

College Advisory Computer Information Systems Board. She has been involved in community activities such as the Lions Club and the Bridgeville Volunteer Fire Company. She attended Chaplain Chapel and is now attending Union United Methodist Church of Bridgeville. Ms. Smith has become a Fund for Women Founder, a Delaware organization that raises funds for various charities throughout the State.

She currently resides with her husband Thomas and their dog Greedy in Bridgeville, Delaware.



***William F. Tobin, Jr.  
Vice-Chair, Personnel***

William F. Tobin was appointed to complete a few months of the remaining term of former Chair, Barbara Green. Mr. Tobin was reappointed by the Governor in 2013 to serve his own seven-year term which expires in May 2020. He was elected Vice Chair, Policies & Procedures in 2012 and served in that role until he was elected Chair in September 2014. Mr. Tobin was re-elected Chair in 2015 and 2016. Having



served the maximum three-year term as Chair, Mr. Tobin was elected Vice-Chair, Personnel in 2017 and held that position until 2020.

Mr. Tobin has served many years in private sector positions, both for-profit and non-profit. His work has included managing budgets of more than \$500,000, and other fiscal aspects such as inventory control, asset management and audit reviews. He is presently a credit manager and safety director for George Sherman Corporation, Lewes, Delaware. He also has an extensive background in sales, and trained and mentored new and existing sales staff.

His public sector experience ranges from 7 years of active duty in the U.S. Coast Guard, where he developed extensive emergency management skills, to training fire company members on Small Boat Handling in conjunction with the Delaware State Marine Police.

He has long been an active member and officer of organizations in the fire and rescue areas, serving as Treasurer and Co-Chair of the Fire and Rescue Boat Committee, Memorial Fire Company; Sussex County Technical Rescue Team as the Finance and Budget Executive, and member of the Delaware State Fire Police and Indian River Fire Company; and Executive Administrator, assistant treasurer, finance Board member of Georgetown American Legion Post #8, Ambulance State #93.

Aside from his interest in fire and safety, he is active in his community as Treasurer, Lower Delaware Shield and Square; American Legion Post #5 member; St. John's Masonic Lodge member; DE Consistory member, and Nur Temple member.

Commissioner Tobin resides in Harbeson, Sussex County, Delaware.



***Michele Whetzel***  
***Vice-Chair, Admin & Procedures***

Mrs. Whetzel was confirmed as a Commissioner on June 15, 2016 for a seven-year term expiring in 2023. Mrs. Whetzel was first elected Vice-Chair, Admin. & Procedures in 2017 and continues to serve in that capacity.

Mrs. Whetzel has lived in Delaware since 1976. She graduated from Newark High School and earned a degree in Finance and Economics from the University of Delaware. After college she worked in financial services and was a Trust Officer with American Guaranty & Trust Company. In 1993 Mrs. Whetzel chose to stay at home with her two (now adult) children. She became active in their schools, the neighborhood, and the greater community through charitable and volunteer activities. Mrs. Whetzel is currently the Executive Vice President and Chief Financial Officer for her family's property management business, Thinking Eye Dog, LLC.

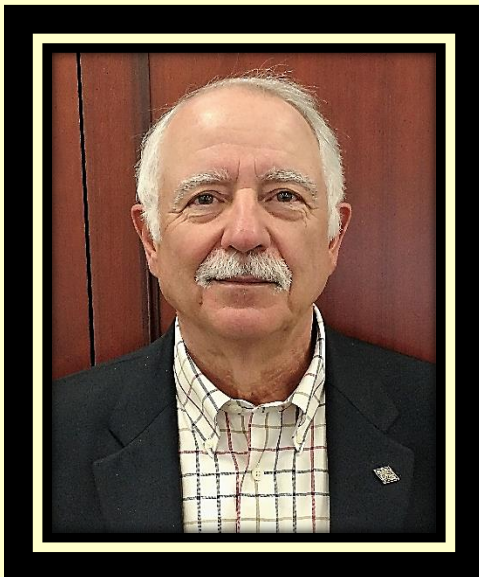
For over 25 years Mrs. Whetzel has been an active volunteer in the nonprofit sector, serving on the Ministry of Caring



Guild Board (treasurer), the New Castle County Adopt-a-Family Board, and the Delaware Community Foundation Board. She recently completed a two-year term as Chair of the Fund for Women and has held other offices on the organization's board since 2008. During her term as Chair the Fund increased its membership by 28% from 1,297 members to 1,660, the largest increase since the organization was founded in 1993.

In addition to the board activities, Mrs. Whetzel also volunteers for Kind to Kids and Child, Inc., serves as an advisor for the Delaware Community Foundation's New Castle County Youth Philanthropy Board, and is on the steering committee for ERANow. She also represents the Fund for Women on the Delaware Grantmakers Association and is starting her 10<sup>th</sup> year as a mentor through Creative Mentoring at Shue-Medill Middle School.

Mrs. Whetzel and her husband Robert reside in Newark.



***Andrew T. Manus***

Mr. Manus was confirmed as a Commissioner on March 28, 2018 for a seven-year term expiring in March 2025.

Mr. Manus received his undergraduate degree from the University of New Hampshire and his Master's degree from Texas A&M University.

Mr. Manus' very active retirement includes managing his wife's family farm. As part of his management duties he practices land stewardship of forested tracts and rehabilitates and repurposes old farm outbuildings. In his spare time, he enjoys being a hobbyist woodworker.

Prior to his retirement, Mr. Manus was the Director of Conservation Programs at The Nature Conservancy in Milton, Delaware from 2004-2014. As Director he managed conservation stewardship operations and land protection staff and assisted staff in promoting ecological restoration and/or management projects and private lands protection strategies.

From 2002-2004, Mr. Manus was the Director of the Ducks Unlimited, Inc., Conservation Programs, Chesapeake Bay and Delaware Bay, Mid-Atlantic Field Office, Stevensville, Maryland. In that role he directed and delivered conservation programs in the five state Mid-Atlantic region while also supervising six staff habitat restoration specialists.

Mr. Manus worked for the Delaware Department of Natural Resources and Environmental Control ("DNREC") from 1990-2001. He was the Deputy Director of the Divisions of Soil and Water Conservation and Water Resources for three years before being appointed Director of the Division of Fish and Wildlife, a position he held for eight years. Mr. Manus was responsible for providing leadership and strategic direction for the Division of 126 full-time employees, 75 seasonal workers and a volunteer corps of 300 individuals. He provided direction to scientists and other

professional staff in the development of research, regulatory, planning and enforcement programs designed to manage and conserve the fish, wildlife and habitat resources of Delaware. Mr. Manus administered an operating budget of \$13.5 million, a land acquisition budget of \$6.5 million and a capital budget of \$2.5 million. In addition, he implemented two legal settlement agreements that totaled \$11.5 million.

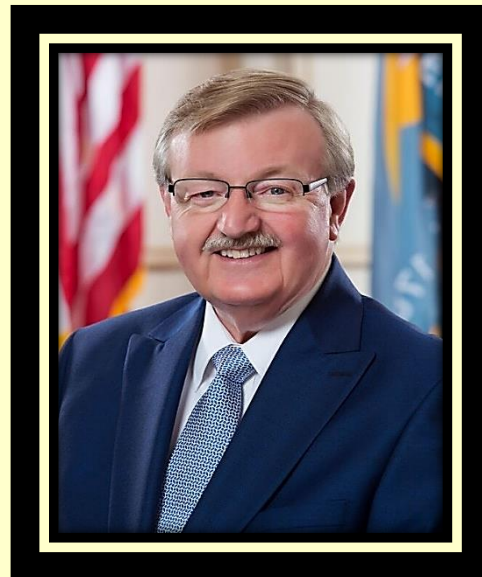
Between 1980 and 1989, Mr. Manus was Assistant Director and Executive Director of the University of Delaware Sea Grant College Program. He managed the Program through multidisciplinary activities in research, education and technical assistance. Mr. Manus oversaw a budget totaled \$2.5 million for a staff of 35.

Mr. Manus has served on numerous boards, commissions and committees related to his love for the outdoors and conservation. A few of those are: Chairman, Atlantic Coast Joint Venture, 2003-2007; Member Executive Committee, International Association of Fish and Wildlife Agencies 1996-2000; President, Northeast Fish and Wildlife Directors Association, 1996-1998; Commissioner, Atlantic States Marine Fisheries Commission, 1993-2001; Member, Atlantic Flyway Council, 1993-2001.

Over the course of his career Mr. Manus received numerous awards and honors. Some of those include: Atlantic Coast Joint Venture Leadership Appreciation Award, 2007; Ducks Unlimited, Conservation Service Award, 2002; Atlantic Flyway Council Leadership Recognition Award, 2002; USFWS, Region 5 Division of Federal Aid, Certificate of Appreciation, 2002; USFWS, Northeast Region, Certificate of Special Appreciation, 2002;

Pennsylvania Fish and Boat Commission, Outstanding Support Award, 2002; New Castle County Council, Resolution of Appreciation for Outstanding Public Service, 2002; Conservation Foundation Recognition of Appreciation for Commitment to Chesapeake Forest Project, 2001; North American Wetlands Conservation Council Resolution of Appreciation, 2001; Delaware Chapter of The Nature Conservancy's Conservation Partnership Award, 1999; University of Delaware Public Service Fellowship, 1989.

Mr. Manus resides in Clayton, Delaware (Kent County).



**The Honorable F. Gary Simpson**

Mr. Simpson was appointed to the Commission on June 19, 2019 for a seven-year term, ending in 2026.

Mr. Simpson is a graduate of Milford High School. He has a Bachelor of Science in Pre-Veterinarian Medicine and a Master's of Science in Agricultural Economics, both from the University of Delaware.

Mr. Simpson began his career as a 2<sup>nd</sup> Lieutenant in the U.S. Army Medical Service Corps. After his military service he spent a few years working as a real estate agent and then spent two decades as a management executive working for the Delaware State Fair and the Harrington Raceway. Senator Simpson returned to the University of Delaware as the Assistant Director of University Relations from 1992 to 2012 and was a State Senator from 1998 to 2018.

Mr. Simpson is a past board member of the Milford Housing Development Council; the Cape Henlopen Senior Center; March of Dimes; and a council member of the U of D Sea Grant Advisory Council. He has also served as a board and Executive Committee member for Bayhealth Medical Center, Milford Memorial Hospital and the Council of State Governments where he was Chair of the Agriculture Committee for the Eastern Region. Mr. Simpson was previously President of the Milford High School Alumni Association, a charter member and President of the Delaware 4-H Foundation, member and Elder of the Milford First Presbyterian Church and a softball coach and umpire. He most recently stepped down from the Delaware Economic & Financial Advisory Council and the Southern Region Education Board.

Mr. Simpson is a board and Executive Committee member for the Delaware State Fair, Inc. and is a member and board member of Eagle's Nest Fellowship Church.

Mr. Simpson has received numerous awards for his community involvement including: Order of the First State, as ordered by Governor John Carney; Legislator of the Year, Delaware State Chamber of Commerce; Conservator of the Year, Conservation Service;

Legislative Friend of Education Award, Delaware State Education Assoc.; Eagle Award, Associated Builders & Contractors, Inc.; Legislator of the Year, Delaware Standardbred Breeders Association.

Mr. Simpson resides in Middletown with his wife, Debbie. They have three daughters and seven grandchildren.



**The Honorable Rourke Moore**

Mr. Moore was appointed to the Commission on June 26, 2019 for a seven-year term, ending in 2026.

Mr. Moore is a native of Wilmington, Delaware. He graduated from Wilmington High School and earned a Bachelor of Arts degree in Psychology from Delaware State University. Mr. Moore continued his education and graduated from Clark Atlanta University with a Master of Arts degree in Counseling/Psychological Services.

After serving in the U.S. Air Force, Mr. Moore began a career in higher education. He has also had a distinguished career in the public and private sector. Mr. Moore has held

numerous administrative and teaching positions with area colleges and universities and served as Vice President with Apex/Pryor Securities, an investment bank. He has been active in education, civic and community organizations. Mr. Moore is currently serving as a Reading Interventionist for Chester Community Charter School and is a Commissioned Ruling Elder of New Castle Presbytery. He is a Ruling Elder member of Council at Community Presbyterian Church. Mr. Moore serves as Moderator and COMC liaison of Christiana Presbyterian Church and liaison of New Castle Presbyterian Church.

Mr. Moore completed extensive graduate coursework in Human Resources at the University of Delaware. He is a former Delaware State Representative, a former President of the Board of Read Aloud/Delaware and Secretary to the Board of the Walnut Street Y. In addition, Mr. Moore is past Chair of the Grants Committee of the African American Empowerment Fund/Delaware, a Life Member of Kappa Alpha Psi, Fraternity, Inc. and a member of Star in the East Lodge #1 F & A.M. PHA.

Mr. Moore currently resides in Wilmington. He is the father of two adult children, Ian and Justin



## ***D. Commission Staff***

### ***Deborah J. Moreau, Esq. Commission Counsel***

As an independent agency, the Commission appoints its own attorney. 29 *Del. C.* § 5809(12). Ms. Moreau was appointed in June 2013, replacing the Commission's previous counsel of 18 years.

A Widener University School of Law graduate (*cum laude*), Ms. Moreau was a member of the Delaware Journal of Corporate Law. During law school she received two awards for her writing submissions. The Herman V. Belk Memorial Award was given in recognition of excellence in writing for an article written to gain admission to the law review in 2003. In 2004, she received the Donald E. Pease Best Student Article Award. Ms. Moreau's (*nee* Buswell) award-winning article was published in the law review. (Foreign Trade Antitrust Improvements Act: A Three Ring Circus – Three Circuits, Three Interpretations (Delaware Journal of Corporate Law, Vol. 28, No. 3, 2004)). The article has been cited in numerous professional materials. During her third year of law school, Ms. Moreau worked as an intern at the Delaware Department of Justice and was provisionally admitted to the Delaware Bar under Delaware Supreme Court Rule 55. That early admission allowed Ms. Moreau to prosecute misdemeanor cases in Family Court before graduation from law school.

Ms. Moreau was formally admitted to practice law in Delaware in 2004. The following year, she was admitted to the U.S. Third Circuit Court of Appeals. Ms. Moreau continued her career at the

Delaware Department of Justice as a Deputy Attorney General for the Criminal Division. While she was a prosecutor, Ms. Moreau handled hundreds of cases, in a variety of courts. She has practiced in Family Court, the Court of Common Pleas and Superior Court. Her varied caseloads included domestic violence, juvenile crime, sexual assaults, guns, drugs, property, robbery, burglary, and murder. Ms. Moreau's work as a prosecutor allowed her to gain extensive trial experience.

In 2020, Ms. Moreau was appointed to the Delaware Board of Bar Examiners (Associate Member).

Ms. Moreau resides in Harrington, Delaware with her husband.



### ***III. Laws Administered by the Commission***

#### **❖ Subchapter I, Code of Conduct**

Executive Branch and local government ethics;

#### **❖ Subchapter II, Financial and Organization Disclosures**

Executive, Legislative and Judicial Branch public officer's annual report of financial interests, such as assets, creditors, income, and gifts. All State elected officials and State candidates must also disclose private organizations of which they are a Board or Council member.

#### **❖ Subchapter III, Compensation Policy**

State or local employees or officials holding dual government jobs with procedures to monitor and prevent "double-dipping;"

#### **❖ Subchapter IV, Lobbying**

Lobbyists' registration, authorization, expense reports, and specific legislative or administrative actions on which they are lobbying State officials or employees.

## ***A. Subchapter I, Code of Conduct – Ethical Standards***

### **Purpose and Jurisdiction:**

Twelve (12) rules of conduct set the ethical standards for “State employees,” “State officers,” and “Honorary State Officials,” in the Executive Branch. 29 *Del. C.* § 5804(6), (12) and (13). It also applies to local governments, unless the local government has a PIC-approved Code that is as stringent as State law. 29 *Del. C.* § 5802(4). The purpose is to instill the public’s respect and confidence that employees and officials will base their actions on fairness, rather than bias, prejudice, favoritism, etc., arising from a conflict, or creating the appearance thereof. 29 *Del. C.* § 5802.

### **Personal Jurisdiction – State Level:**

The Code of Conduct applies to all Executive Branch employees (rank and file, including part-time), officers (elected and appointed senior level Executive Branch officials), honorary State officials (appointees to more than 300 Boards and Commissions), as well as public/charter school employees. Approximately 30,000 persons are in those State categories.



## Personal Jurisdiction – Local Level:



At the local level, the number of employees, officers and officials in the local governments over which the Commission has jurisdiction is unknown.

In **2019**, local governments who had adopted their own Codes of Conduct included: New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, Delaware City, and Wilmington. As they have their own Code, the Commission no longer has jurisdiction over their employees, officers, and appointed officials. The remaining 49 local governments are under the

PIC's jurisdiction. In 2013, PIC approved a proposed Code of Conduct for the Town of Dewey Beach which has not yet been formally adopted by the town council.

## Subject Matter Jurisdiction:

The Code of Conduct restricts participating in an official government capacity if there is a personal or private interest in a matter before them; bars all employees, officers and officials from representing or assisting a private enterprise before their own agency in their private capacity; bars officers (senior level officials) from representing or assisting a private enterprise before any agency; limits public servants in obtaining contracts with the government entity with which they serve; restricts their activities for 2 years after

terminating State employment. 29 *Del. C.* § 5805. The law also restricts acceptance of gifts, outside employment or anything of monetary value; use of public office for personal gain or benefit; improper use or disclosure of government confidential information; and/or use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency. 29 *Del. C.* § 5806. The Code also bars conduct that creates a justifiable impression, or that may “raise public suspicion,” of improper conduct, 29 *Del. C.* § 5802(1) and § 5806(a). Thus, the Commission considers if there is an appearance of impropriety.

The appearance of impropriety, under the Code of Conduct, is evaluated using the Judicial Branch standard, as interpretations of one statute may be used to interpret another when the subject (ethics) and the standard (appearance of an ethics violation) apply in both (public servant) cases. *Sutherland Stat. Constr.* § 45-15, Vol. 2A (5th ed. 1992).

## **Penalties:**

Both criminal and administrative penalties may be imposed.

**(1) Criminal Prosecution:** The General Assembly, in passing the law, found that some standards of conduct are so “vital” that the violator should be subject to criminal penalties. 29 *Del. C.* § 5802(2). Four (4) rules carry criminal penalties of up to a year in prison and/or a \$10,000 fine. 29 *Del. C.* § 5805(f). Those rules are that employees, officers, and honorary officials may not: (1) participate in State matters if a personal or private interest would tend to impair judgment in performing official duties; (2) represent or assist a private enterprise before their own agency and/or other State agencies; (3) contract with the State absent public notice and bidding/arm’s length negotiations; and (4) represent or assist a private enterprise on certain State matters for 2 years after

leaving State employment. 29 *Del. C.* § 5805(a)(2). Beyond referring suspected Code violations for criminal prosecution (see more information below), if a majority of Commissioners finds reasonable grounds to believe a violation of other State or Federal laws was violated, they may refer those matters to the appropriate agency. 29 *Del. C.* § 5807(b)(3) and(d)(3); § 5808(A)(a)(4); and § 5809(4).

In 2015, the PIC's criminal enforcement power was enhanced by the Attorney General's creation of the Office of Civil Rights and Public Trust ("OCRPT"). Now, when the PIC uncovers a Code of Conduct violation for which there are criminal penalties, the matter may be referred to OCRPT for further investigation and possible criminal prosecution. In 2018, the PIC referred two matters to the Attorney General's office involving possible violations of the confidentiality requirements in 29 *Del. C.* §§ 5806(d), 5807(b) or (d) and 5810(h). Before referring those matters, Commission Counsel discovered applicable case law from the Third Circuit Court of Appeals (which includes Delaware) that found confidentiality requirements in state statutes are usually deemed to be a violation of the U.S. Constitution's First Amendment right to free speech. That additional information was included in the referral. At the beginning of **2019**, the OCRPT agreed with the PIC and concluded that the statute was, in fact, unconstitutional. PIC will begin working to amend the language of the statute to reflect the most current case law.

**(2) Administrative Sanctions:** Violating the above rules may, independent of criminal prosecution, lead to administrative discipline. 29 *Del. C.* § 5810(h).

Under some rules both criminal and/or administrative sanctions may occur, but violating the following rules results only in administrative action: (1) improperly accepting gifts, other employment, compensation, or anything of monetary value; (2) misuse of

public office for private gain or unwarranted privileges; and (3) improper use or disclosure of confidential information. 29 *Del. C.* § 5806(b), §5806(e) and § 5806(f) and (g).

Disciplinary levels: (1) reprimand/censure of any person; (2) removing, suspending, demoting, or other appropriate disciplinary action for persons other than elected officials; or (3) recommending removal from office of an honorary official. 29 *Del. C.* § 5810(h).

### **Case Law Regarding Jurisdiction:**

In **2019**, Commission Counsel successfully argued to the Delaware Superior Court that the PIC did not proceed improperly, or exceed their authority, by dismissing a Complaint filed against a state-employed attorney who is also subject to the Delaware Lawyers' Rules of Professional Conduct. On appeal, the decision was upheld by the Delaware Supreme Court which issued their *en banc* opinion on February 25, 2019. (See *Abbott v. PIC*, No. 155, 2018, C.A. No. N16A-09-009 FWW (Del. Supr., February 25, 2019).



## ***B. Subchapter II, Financial and Organizational Disclosure Requirements***

Both the financial disclosure report and the organizational disclosure are snapshots of any interest held by an official as of the date reported. The decision on whether those interests, or any acquired after that date but not yet reported, create a conflict of interest, is based on the conflict laws for that particular officer. Executive Branch elected officers are subject to the State Code of Conduct; Legislators are subject to the Legislative Conflicts of Interest law; and Judicial officers are subject to the Judicial Code of Conduct.

### **FINANCIAL DISCLOSURE:**

#### **Purpose:**

Subchapter II is meant to instill the public's confidence that its officials will not act on matters if they have a direct or indirect personal financial interest that may impair objectivity or independent judgment. 29 Del. C. § 5811. Compliance, in part, is insured when they report financial interests shortly after becoming a public officer, (14 days), and

each year thereafter on March 15, while a public officer. 29 *Del. C.* § 5813(c). Identifying the interests helps the public officer recognize a potential conflict between official duties and personal interests that may require recusal or ethical guidance.

### **Personal Jurisdiction:**

More than 350 “public officers” in the Executive, Legislative, and Judicial branches must file financial disclosure reports within 14 days of becoming a public officer and on March 15 each year thereafter. 29 *Del. C.* § 5813(c). Filers include: All Executive and Legislative Branch elected officials; all cabinet secretaries, division directors, and their equivalents; all members of the judiciary; and candidates for State office. 29 *Del. C.* § 5812(n)(1). PIC received 359 Financial Disclosure filings between January 1<sup>st</sup> and March 15<sup>th</sup> in **2019**. As State candidates must also file, the number of filers per year varies depending on the number of statewide elections in a given year. **2019** was not an election year.

### **Subject Matter Jurisdiction:**

Assets, creditors, income, capital gains, reimbursements, honoraria, and gifts exceeding \$250 are reported. Aside from their own financial interests, officials must report: assets held with another if they receive a direct benefit, and assets held with their spouses and children, regardless of direct benefits. 29 *Del. C.* § 5813.

### **Penalties:**

Willful failure to file a report is a Class B misdemeanor. Knowingly filing false information is a Class A misdemeanor. 29 *Del. C.* § 5815. The Commission may refer suspected violations to the Commission Counsel for investigation and to the AG for

investigation and prosecution. *Id.* The penalties are: (1) up to six months incarceration and/or a fine of up to \$1,150 for a Class B misdemeanor, 11 *Del. C.* § 4206(b); and (2) up to one year of incarceration and a fine of up to \$2,300 for a Class A misdemeanor, 11 *Del. C.* § 4206(a). The Court may also require restitution or set other conditions as it deems appropriate. 11 *Del. C.* § 4206(a) and (b).

## **ORGANIZATIONAL DISCLOSURES:**

### **Purpose:**

Potential conflicts can arise from associational interest, even without a financial interest, and if the organization seeks action by the General Assembly, the Governor, Lt. Governor, Treasurer, Auditor, Insurance Commissioner, or Attorney General, the annual reporting reminds them of that possibility. The reports are public records, and may be requested on the [FOIA form](#), on the Commission's website. That allows the public to also monitor the financial and associational interests of these officials.

### **Personal Jurisdiction:**

State elected officials and Candidates for State office are required to disclose their memberships on councils or boards. 29 *Del. C.* § 5813A. Other public officers, e.g. cabinet secretaries, division directors, and their equivalents are not required to file this information.



## **Subject Matter Jurisdiction:**

Elected officials and candidates must disclosure the name and address of every nonprofit organization, (excluding religious organizations), civic association, community association, foundation, maintenance organization, or trade group incorporated in the State or having activities in the State, or both, of which the person is a council member or board member. 29 *Del. C.* § 5813A.

## **Penalties:**

Same as for financial disclosure reporting violations.



### ***C. Subchapter III - Compensation Policy – “Anti-Double Dipping Law”***

#### **Purpose:**

Some elected and paid appointed officials hold a second job with State agencies or local governments. Taxpayers should not pay an individual more than once for overlapping hours of the workday. 29 *Del. C.* § 5821(b). To build taxpayers' confidence that such employees and officials do not “double-dip,” those with dual positions must have their Supervisor verify time records of hours worked at the full-time job on any occasion that they miss work due to the elected or paid appointed position. 29 *Del. C.* § 5821(c) and § 5822(a). The full-time salary may be prorated, unless the dual employee uses leave, compensatory time, flextime or personal time. *Id.*

## **Jurisdiction:**

The number of people to whom this law applies varies based on how many State and local government employees hold dual, government (state, municipal, county) employment.

For those holding dual positions, who also are subject to the Code of Conduct—Executive Branch and local governments--the “double-dipping” restrictions are reinforced by the ethical limits on holding “other employment.” 29 *Del. C.* § 5806(b). Complying with the ethics provision is extra insurance against “double-dipping,” and also helps ensure the “other employment” does not raise ethical issues. Further assurance against double-dipping is that the statute requires the Auditor to annually audit time records. 29 *Del. C.* § 5823. Generally, the audit is comprised of time records for General Assembly members who are also State employees.

In **2019**, PIC did not receive a Dual Compensation Report from the State Auditor’s Office. Previous reports have found that the State does not have adequate rules and procedures in place to allow for adequate oversight of the Dual Compensation law. Most significantly, the population of individuals who received dual compensation from government entities was unable to be determined from data available to the PIC. While the PIC does collect financial information from the State’s Public Officers, it does not have jurisdiction to collect that information from individuals employed by towns, municipalities or counties within the State who may collect dual government income. Substantial changes to the Dual Compensation law are necessary to allow the PIC to gather the information necessary to properly administer this portion of the code. To that end, HB 252 was introduced in the General Assembly in January 2016 to remedy some of the

problems identified in the State Auditors CY 2014 report. The Bill was never released from committee. A similar Bill was introduced in March 2017, HB 73, which was released from committee in March 2018 but was never brought to the floor for a vote. PIC supports any effort to strengthen and improve our ability to collect and oversee the Dual Compensation law. That includes collecting and analyzing Financial Disclosures from municipal and county employees, as long as it receives additional manpower and resources to ensure the additional responsibilities are properly administered.

### **Penalties:**

Aside from pro-rated pay where appropriate, discrepancies are reported to the Commission for investigation, and/or the AG for investigation and prosecution under any appropriate criminal provision. 29 *Del. C.* § 5823.



## ***D. Subchapter IV – Lobbyist Registration and Reporting***

### **Purpose:**

Individuals authorized to act for another, whether paid or non-paid, must register with the Commission if they will be promoting, advocating, influencing or opposing matters before the General Assembly or a State agency by direct communication. 29 *Del. C.* § 5831. Lobbying registration and reporting informs the public and government officials whom they are dealing with so that the voice of the people will not be “drowned out by the voice of special interest groups.” *United States v. Harris*, 347 U.S. 612 (1954).

### **Jurisdiction:**

When PIC began administering the lobbying registration law in 1996, there were approximately 200 organizations represented by lobbyists. At the end of **2019**, 335 lobbyists, representing 1204 organizations, were registered.

## Reporting Requirements:

Each lobbyist is to file quarterly reports revealing direct expenditures on General Assembly members and/or State agency members. 29 *Del. C.* § 5835(c). That results in 4988 expense reports. If the expense exceeds \$50, the lobbyist must identify the public officer who accepted the expenditure, and notify the official of the value. *Id.* In **2019**, lobbyists reported expenditures totaling \$71,660.68. In addition to reporting expenditures, lobbyists are also required to report their lobbying activity. Lobbyists must report legislation by bill number or administrative action by number or title, within 5 business days of lobbying a State official. 29 *Del. C.* § 5836. “Lobbying” consists of direct communication with a State employee or official, including General Assembly members, for the purpose of advocating, promoting, opposing, or influencing legislation or administrative action. 29 *Del. C.* § 5831(5). The law also required that all registration, expense reports, and the new “Lobbying Activity Report” be filed online. 29 *Del. C.* § 5832(a).

Beyond the “Lobbying Activity Reports” that the lobbyists must file, the 2012 legislation required PIC to report all lobbying activity to the General Assembly on at least a weekly basis while the General Assembly is in session. 29 *Del. C.* § 5836(d). Further, it required that a [searchable public database](#) be created so that the public could search for information on the names of lobbyists and their employers, expense reports, and the Lobbying Activity Report. 29 *Del. C.* § 5836(d).

In 2013, the Public Integrity Reporting System (PIRS) was created in an effort to accommodate the new legislative reporting requirements. The new database was announced as the Web 2.0 Award winner in the “Harnessing the Power of Civic Media”

category by the Public Technology Institute (PTI). Users of PIRS can see which lobbyists are involved in specific legislation or administrative regulation, and view lobbyists' employers and financial disclosures. The new system also made it easier for lobbyists and public officials to submit required lobbying and gift-related reports online. The PIRS online interface is also mobile-friendly, allowing lobbyists to report, and citizens to search using smartphones, tablets and other mobile devices.

## **Penalties:**

**Administrative:** The PIC may impose the administrative penalty of cancelling a lobbyist's registration for failure to timely file their expense reports at the end of each calendar quarter. They may not re-register or act as a lobbyist until all delinquent authorizations and/or reports are filed. *Id.* Obviously, this affects their ability to represent an organization in which they are interested enough to volunteer, or affects their job performance if they cannot perform their paid duties. Recognizing the impact on lobbyists if their registrations are cancelled, the Commission sends several failure-to- file notices via e-mail, followed by certified letter. If the lobbyist does not respond, before their registration is cancelled, the organization which they represent is also notified. The names of delinquent filers are available on the PIC's website by searching lobbyist reports by quarter.

Over time the administrative penalty ceased to be an effective compliance tool. In the first quarter of 2014, there were 79 delinquent lobbyists. By the end of the third quarter there were over 100 delinquent lobbyists. Compare those numbers with a total of 15 delinquent lobbyists for the fourth quarter of 2013.



**Financial:** As a result of the increasing number of delinquent filers, in 2014 PIC successfully introduced legislation to impose a financial penalty on lobbyists for failure to file expense reports in a timely manner. Beginning in 2015, delinquent lobbyists were required to pay a \$25 fine for the first day of their delinquency. Thereafter, an additional \$10 per day accumulated to a maximum fee of \$100. Lobbyists may not resume lobbying until all fees have been paid and all delinquent reports have been filed. In the fourth quarter of 2017, the number of delinquent filers was reduced to 10. In **CY2019**, PIC collected \$5865 in late fees.

**Criminal:** Any person who knowingly fails to register or knowingly furnishes false information may be found guilty of a misdemeanor. 29 *Del. C.* § 5837. Unclassified misdemeanors carry a penalty of up to 30 days incarceration and a fine up to \$575, restitution or other conditions as the Court deems appropriate. 11 *Del. C.* § 4206(c).



#### ***IV. Methods for Achieving Compliance***

##### **(1) Training and Publications - 29 Del. C. § 5808(A)(a)(1)**

As the Commissioners normally meet monthly, the day-to-day work of providing guidance and facilitating compliance with the laws, conducting seminars and workshops, publishing materials, etc., are the Commission Counsel's statutory duties. *Id.*

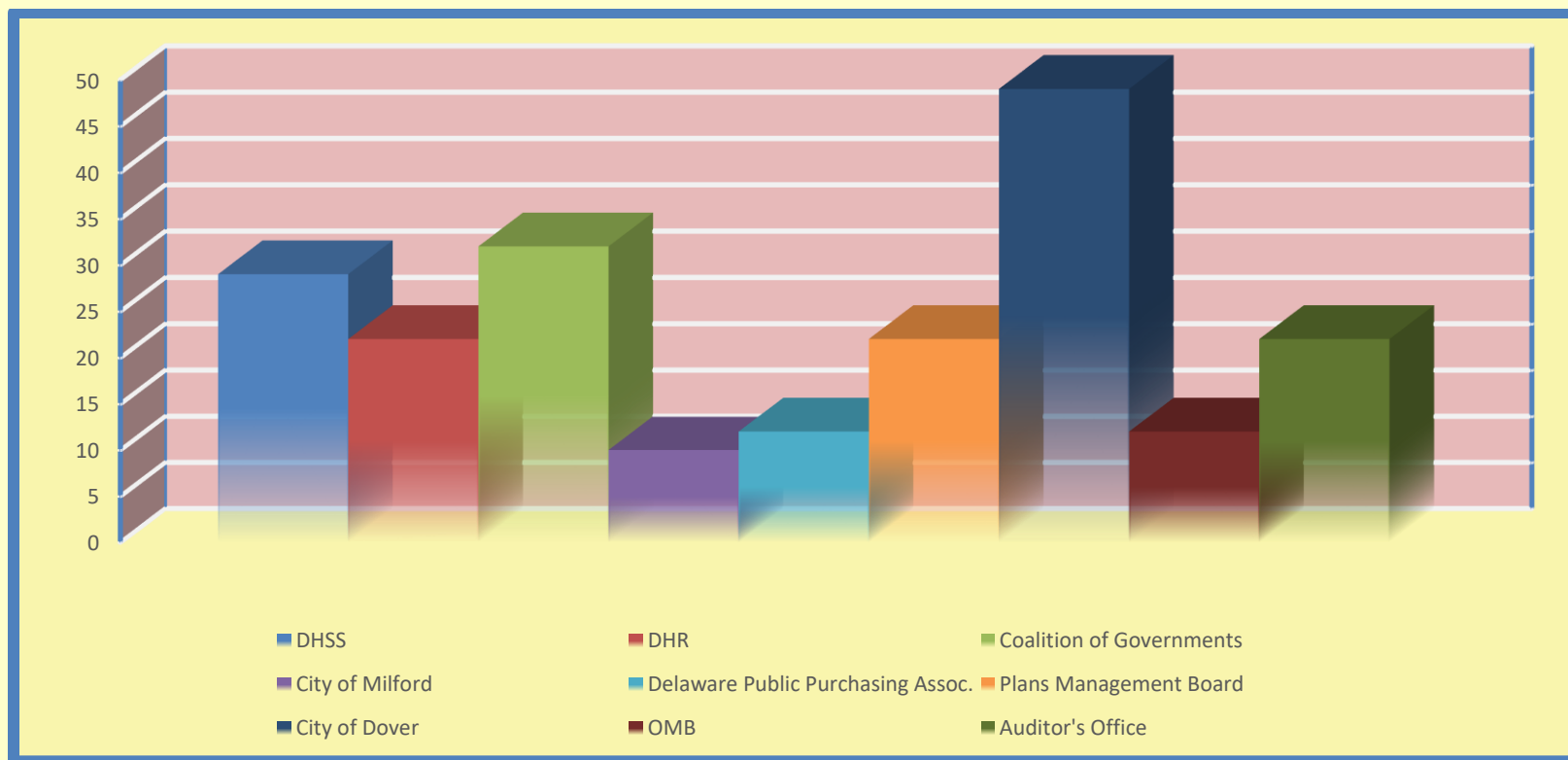
To best assist government officials and lobbyists in understanding and complying with the law, the Commission's primary focus is on training. Training is reinforced by handouts and publications which can be reviewed later. For quick reference, an Ethics Brochure with the 12 rules of conduct with some brief case examples is provided. It also has procedures for obtaining advice or waivers, and filing complaints.

Opinion synopses are available on the PIC's website. The synopses are sorted by topic and include a summary of all matters decided by the Commission from 1991 to 2019. As individuals encounter similar situations, they can refer to the synopses for general guidance. The website also includes the Delaware Code of Conduct, all Ethics Bulletins, a brochure on Delaware's gift laws, the Commission's rules and its Annual Reports. For

Financial Disclosure filers and Lobbyists, the web site has instructions for on-line filing. Lobbyists can link to the Legislative Bill Drafting Manual if drafting legislation for clients. The web site also includes links to related laws such as the Legislative Conflicts of Interest Law and the Judicial Code of Conduct.

In **2019**, Commission Counsel presented 7 training classes to a total of 210 attendees. The training classes were presented to a wide variety of state, county, municipal and legislative entities. In an effort to reach more State employees, the PIC created an online training module which is available through the Office of Management and Budget's Training Website. The module is a 30-minute introduction to common ethics issues facing State employees. It does not replace the more in-depth, in-person training sessions. In **2019**, 888 employees completed the online training module, 22% more than in 2018. PIC will continue to focus more training resources to school districts, charter schools and municipalities in order to reach larger audiences.

## ***2019 Live Ethics Training--# of Attendees Per Agency***

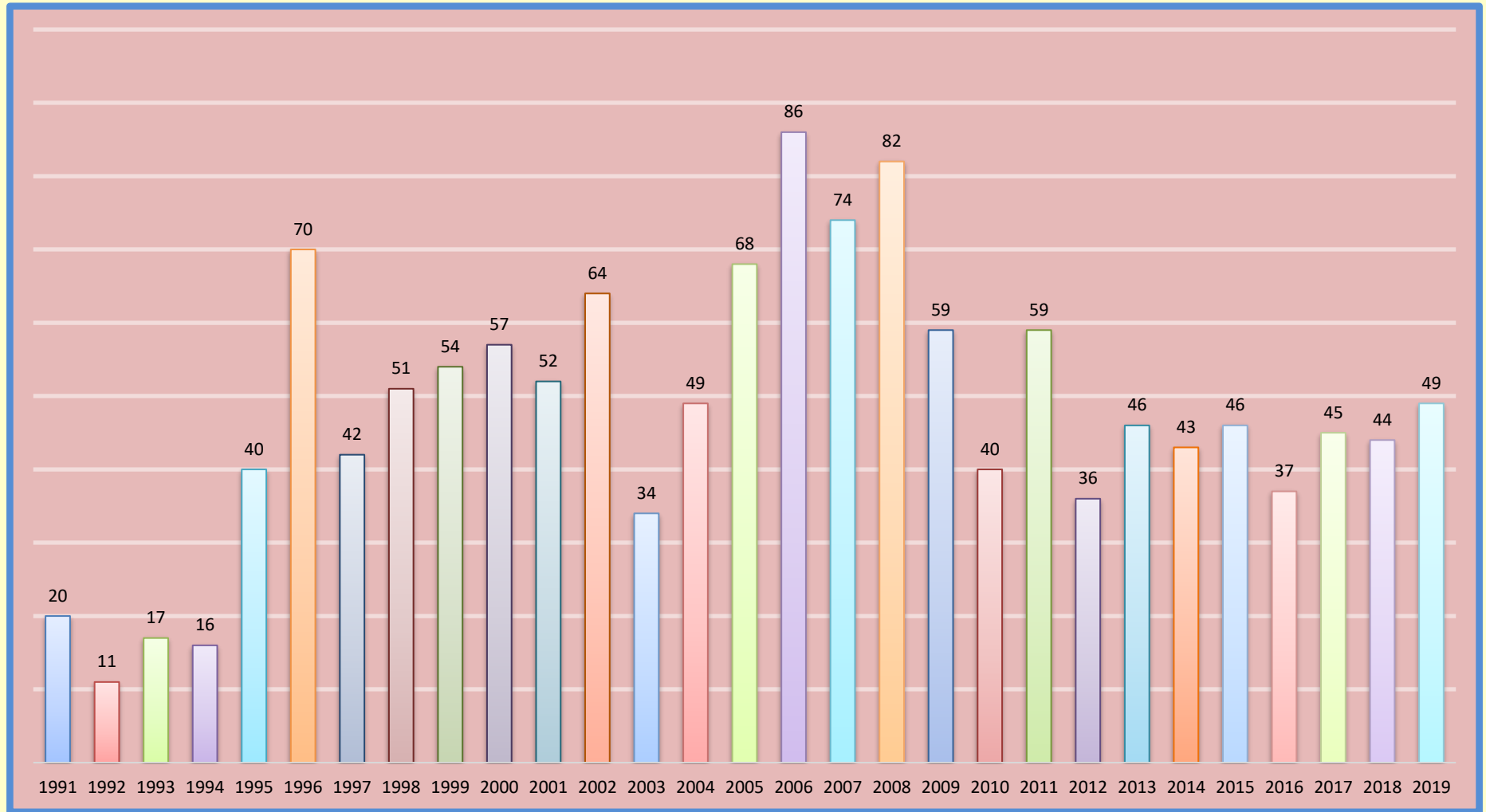


## **(2) Advisory Opinions - 29 Del. C. § 5807(c).**

Any employee, officer, honorary official, agency, or lobbyist may seek the Commission's advice on the provisions applying to them. Training and publications provide a broad, general view about the State Code of Conduct. However, the Commission's advisory opinions and waivers provide applicants with personal attention on potential conflicts, guiding them through the steps that would prevent crossing the ethics line. While advisory opinions are non-binding, if the individual follows the advice, the law protects them from complaints or disciplinary actions. 29 Del. C. § 5807(c). Synopses of those opinions later become learning tools at training classes and are available on our website.

In **2019**, the PIC acted on 49 requests for written advice. 38 formal advisory opinions were issued by the Commission and Commission Counsel responded to 11 requests for written informal advice. (See chart below). The number of requests for opinions has been fairly stable over the past five years. This is likely due to the fact there have not been any changes to the Code of Conduct. The Commission typically sees spikes in the number of requests when there is a change in the Code.

## Number of Opinions Issued 1991-2019



### **(A) Waivers - 29 Del. C. § 5807(a)**

Any employee, officer, honorary official, agency, or lobbyist may seek a waiver. In rare cases, an individual may need to deviate from the law. The Commission may grant waivers if: (1) the literal application of the law is not necessary to serve the public purpose; or (2) an undue hardship exists for the agency or employee. Waivers are open records so the public knows why a deviation from the law was allowed in a particular case. As some standards are so “vital” that they carry criminal penalties, making the information public further instills confidence that an independent body makes the decision. It also gives the public better exposure to the Commission’s deliberation process which may not be as clear when only a synopsis, that cannot identify the individual by name or through sufficient facts, is permitted.

In **2019**, two waivers were granted. *Commission Op. Nos. 19-02; 19-29.* (See Appendices A-B). When a waiver is granted, the proceedings become a matter of public record. Those decisions are also available on the Commission’s website.

### **(B) Complaints - 29 Del. C. § 5810(a).**

Any person, public or private, can file a sworn complaint. The Commission may act on the sworn complaint, or its own initiative. A majority (4) must find “reasonable grounds to believe” a violation may have occurred. 29 Del. C. § 5808(A)(a)(4). If probable cause is found, the Commission may conduct a disciplinary hearing. 29 Del. C. § 5810. The person charged has statutory rights of notice and due process. Violations must be proven by clear and convincing evidence. If a violation is found, the Commission may impose administrative discipline. 29 Del. C. § 5810(d). It may refer substantial evidence of criminal law violations to appropriate federal or State authorities. 29 Del. C. § 5810(h)(2). Frivolous or non-merit complaints, or those not in the Commission’s jurisdiction, may be dismissed. 29 Del. C. § 5809(3).



In **2019**, the Commission received three properly submitted complaints and conducted one investigation. One Complaint was dismissed for failure to properly allege a violation of the Code of Conduct. Two Complaints were substantiated and they proceeded to a formal hearing. The result of the investigation was turned over to the requesting party for further action.

A complaint must be in writing, allege violations of specific portions of the Code of Conduct with supporting facts, and be properly notarized. The correct form of notarization is below:

29 Del. C. § 4328(3) For a verification upon oath or affirmation:

State of.....

County of.....

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(signature of notarial officer)

(Seal)

(title and rank)

(my commission expires:.....)



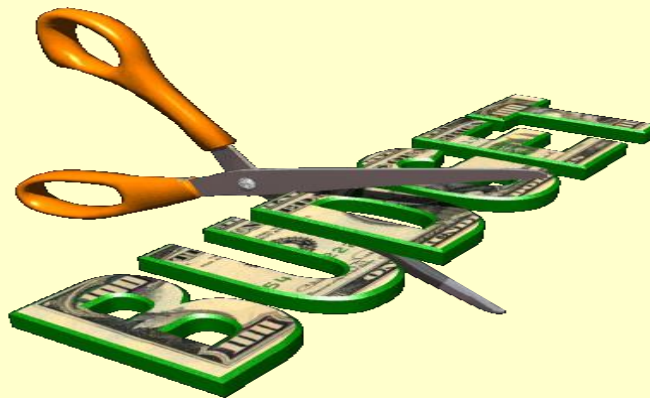
## ***V. FOIA Requests***

In **2019**, PIC responded to 24 requests for information under the Freedom of Information Act (FOIA). The FOIA requests were submitted by a mix of news media, citizens, and private political organizations. Due to the efficiencies of the PIRS database, PIC was able to respond to all of those requests within 5 days.



## ***VI. Funding***

In **FY 2020**, which includes the last half of the 2019 calendar year, the General Assembly appropriated \$185,100 for the PIC, with an operating budget of \$18,300. That amount is the smallest operating budget since PIC was created in 1996 when the operating budget was \$40,100. Today, the PIC's operating budget is 55% less than in 1996. When adjusted for inflation, the operating budget has been **cut** by 72% over the past 20 years. Meanwhile, the PIC's duties continue to increase.





## ***VII. Legislation***

### **Legislation:**

During the 2019 legislative session HB 217 was introduced which requires members of the General Assembly to abide by the State Code of Conduct's two-year post-employment restriction under certain circumstances. The text of the bill is below:

- 1                   (2) Post-employment restrictions on former members of the General Assembly. – A former member of the  
2                   General Assembly may not accept an appointment to or employment in a position in a State agency for 1 year  
3                   following the former member's final term of office if the position meets either of the following:  
4                   a. Is a position created during the former member's final term of office.  
5                   b. Is a position for which the compensation was increased during the former member's final term of  
6                   office and which the former member did not hold during the former member's final term of office. For purposes of  
7                   this paragraph (d)(2)b. of this section, "compensation was increased" does not include an increase in compensation  
8                   that is appropriated by the General Assembly to all similarly situated State employees.

The bill has not yet been released from the House Administration Committee. The General Assembly may choose to pursue this legislation during the 2020 half of the legislative session.



### ***VIII.Future Goals***

The Commission's focus will be to continue to emphasize education of employees, officers, officials, and lobbyists with the limited resources at our disposal.



STATE OF DELAWARE  
**DELAWARE STATE PUBLIC INTEGRITY COMMISSION**

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TELEPHONE: (302) 739-2399

**VIA EMAIL**

**March 27, 2019**

**19-02--Personal or Private Interest (Waiver Granted)**

**Hearing and Decision By:** *Bonnie Smith (Chair); William F. Tobin, Jr., (Vice-Chair); Michele Whetzel, (Vice-Chair); Commissioners: Andrew Manus; Jeremy Anderson, Esq.*

Dear Mr. Chesney,

Thank you for attending the March 19, 2019 Commission meeting. Once again, the Commission would like to extend its sincere apologies for your extremely long wait while the Commission considered the matter which was scheduled immediately preceding yours. Please also extend our apologies to your agency's Deputy Attorney General, Lawrence Lewis, who had to leave for a meeting before the Commission had the opportunity to meet him.

After consideration of all the relevant facts and circumstances, the Commission decided to grant your request for a waiver to allow you to contract with a vendor to place advertisements in the University of Delaware's game day program. The Commission's reasoning is set forth below. As a waiver was granted, this opinion will be published in its entirety so that the public will know that the Commission has reviewed and approved the matter.

**I. FACTS**

You are the Director of Communications for the Division of Small Business ("DSB") within the Department of State. Your Division was established in July 2017, to replace the Delaware Economic Development Office. As a new division, you are exploring ways to raise public awareness about the work of the DSB. Part of your State job duties includes locating and supervising outside vendors, including local and regional publications, to whom the DSB pays for advertising space. Your division has identified a key demographic group that is most likely to own a small business and you believe that one way to target that demographic is to buy ads in the University of Delaware's game day program. The cost of the ads you want to place are \$5,000, below the State threshold for public notice and bidding. Only one vendor, University Sports Publications ("USP"), sells ad space in the game day programs and their salesperson is someone with whom you have a long and close friendship. You recognized that your friendship with the vendor's representative may create a conflict of interest with your State job duties and asked the Commission for an advisory opinion. If the Commission determined that your personal interest did violate the Code of Conduct's conflict of interest provision, you asked for a waiver to be allowed to contract with the vendor.

## II. APPLICATION OF THE FACTS TO THE LAW

### **A. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them. 29 Del. C. § 5805(a)(1).**

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter." 29 Del. C. § 5805(a)(1). As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated. 29 Del. C. § 5805(a)(2)(a) and (b). A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest." 29 Del. C. § 5805(a)(2). Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials. See, e.g., *Commission Op. Nos. 00-04 and 00-18*. When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd.*, No. 304 (Del., January 29, 1996).

You do not have a conflict of interest as a matter of law because the salesperson is a friend, not a close relative. However, you have a conflict of interest as a matter of fact because the salesperson for USP is a close friend. You stated that you have known each other for over a decade and you were both members of the other's wedding party. Having established that you have a personal interest, your request to contract with USP would create a conflict of interest with your State job duties because you would be reviewing and disposing of matters in which you have a personal interest, namely a financial benefit to your friend's employer and a sales commission for your friend.

### **B. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust. 29 Del. C. § 5806(a).**

The purpose of the code is to ensure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. 29 Del. C. § 5802. The Commission treats that as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. See, e.g., *Commission Op. No. 97-23 and 97-42*. Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment. 29 Del. C. §§ 5802(1) and 5802(3).

Any member of the public aware of the close relationship between the buyer (you/the State) and seller (your friend/vendor) would likely be suspicious that your official duties were influenced by your friendship with the salesperson, regardless of the relatively small dollar amount of the contract. At the meeting you stated that you could recuse yourself from working with the vendor and ask one of your supervisors to handle the matter, but you added that it would be additional work on that person's workload. Although you have a conflict of interest, the Commission decided that your recusal was not necessary given the waiver granted below.



**C. Waivers may be granted if there would be an undue hardship on the State employee or State agency, or the literal application of the law is not necessary to serve the public purpose. 29 Del. C. § 5807(a).**

**(a) Undue Hardship 29 Del. C. § 5807(a)**

A waiver may be granted if there is an “undue hardship” on the applicant or the agency. 29 Del. C. § 5807(a). “Undue” means “more than required” or is “excessive.” *Commission Op. No. 97-18* (citing *Merriam Webster’s Collegiate Dictionary*, p. 1290) (10<sup>th</sup> ed. 1992).

USP is the sole source that provides advertising in the U of D’s game day programs. Obviously, the DSB has an interest in advertising in Delaware so that it may reach Delaware residents interested in the services your Division provides. The Commission decided that the fact that USP is the only vendor providing the service you have identified as being beneficial to DSB’s outreach efforts, qualifies as an undue hardship and has granted your request for a waiver. The waiver is for one year and the amount of money that can be paid to the vendor must not exceed the initial \$5,000 that was discussed at the meeting. If you and your Division decide that advertising in the game day programs was a successful marketing strategy and want to continue contracting with the vendor in the future, you should return to the Commission for further advice.

**(b) Is literal application of the law necessary to serve the public purpose?**

The overall purpose of the Code of Conduct is to instill the public’s confidence in its government. 29 Del. C. § 5802(1) and (2). The statute was designed to protect against these types of transactions and its enforcement is usually the best way to serve the public purpose. However, the relatively small dollar amount of the contract (\$5,000) and the length of the waiver (not to exceed one year) strikes a reasonable balance between the law’s public purpose and the State’s interest in growing a new division.

**III. CONCLUSION**

The DSB is granted a one-year waiver of the conflict of interest provision in the Code of Conduct to allow you to oversee a contract with USP, for no more than \$5,000, to purchase advertising space in the U of D’s game day programs.

Sincerely,

*/s/ Bonnie Smith*

Bonnie Smith  
Chair





STATE OF DELAWARE  
**DELAWARE STATE PUBLIC INTEGRITY COMMISSION**

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TELEPHONE: (302) 739-2399

VIA EMAIL

Oct. 3, 2019

**19-29--Private Interest (Waiver GRANTED)**

**Hearing and Decision By:** William F. Tobin, Jr., (Vice-Chair, Acting Chair); Michele Whetzel, (Vice-Chair); Commissioners: Andrew Manus; Roarke Moore; F. Gary Simpson

Dear Dr. Tello,

Thank you for attending the Sept. 17, 2019 Commission meeting to which you were accompanied by Harvey Doppelt, the Director of Specialized Services at DPBHS and Chief Investigator of the CORE program. After consideration of all the relevant facts and circumstances, the Commission decided that it would be a conflict of interest for your private business to contract with a vendor benefiting from Federal grant monies that pass through your employing agency. However, the Commission granted you a waiver until June of 2020, the grant's expiration date. The Commission's reasoning is set forth below.

**I. FACTS**

You are a Family Crisis Therapist ("FCS") for the Division of Prevention and Behavioral Health Services ("DPBHS"), within the Department of Services for Children Youth and their Families ("DSCYF"). You are assigned to the Wm. C. Lewis Elementary School ("school") in the Red Clay School District. The school provides a dual language immersion setting. You work with children and their parents from kindergarten through 5<sup>th</sup> grade to provide case management, referral and counseling services to the children and their families. You also act as an advocate for the parents within the school.

You also have a private business, Hispanic Personal Development. You want your business to provide services under the umbrella of Delaware CORE (Community Outreach, Referral and Early intervention) by contracting with one of CORE's vendors, Horizon House. CORE is funded by the Federal government by means of a pass-through grant and is administered by DPBHS, your state employer. CORE serves young adults ages 16-25 who have symptoms of early psychosis. CORE believes that with early intervention people diagnosed with psychosis can lead rewarding and productive lives. To that end, CORE educates the public about psychosis while also guiding and supporting youth and families that are affected.<sup>1</sup> Your business would assign a 'cultural broker' to Hispanic speaking families to help them navigate the bureaucracy of the state and the healthcare

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<sup>1</sup> delawarecore.com

system. The request for a cultural broker would likely come from a Horizon House employee. Your business is the only one of its kind in Delaware.

You asked the Commission if it would be a conflict of interest for your business to contract with a vendor in the Delaware CORE program. Furthermore, if the Commission decided that such a contract would be a violation of the Code of Conduct, you asked for a waiver.

## **II. APPLICATION OF THE FACTS TO THE LAW**

### **A. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them.<sup>2</sup>**

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter."<sup>3</sup> As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated.<sup>4</sup> A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest."<sup>5</sup> Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials.<sup>6</sup> When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited.<sup>7</sup>

Your state job duties are unrelated to the work you would perform for CORE. In your State position, you work with children in kindergarten through 5<sup>th</sup> grade. The age demographic for the CORE program is ages 16-25. Because of the differing age demographics between the two positions, the Commission decided that it was very unlikely that you would encounter one of your State clients while performing duties related to your private business and vice versa. As a consequence, the potential for a conflict of interest is greatly reduced. At the meeting you did acknowledge that there is a remote possibility that you could work with a State client in the school setting and discover that one of their older family members would benefit from CORE's services, but that it had never happened before. In order to avoid a conflict that may arise from such a situation, you would ask the school counselor if they could work with the student's family so that you would not have a conflict of interest. As a result, you have identified an acceptable recusal strategy for this portion of the Code of Conduct that would mitigate any conflict of interest issues between your two roles.

### **B. No state employee may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee is associated by employment.<sup>8</sup>**

You work for the agency that administers the CORE program. While it is true that your State job duties are not related to grants or contractors, your private business would receive monies from one or

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<sup>2</sup> 29 Del. C. § 5805(a)(1).

<sup>3</sup> 29 Del. C. § 5805(a)(1).

<sup>4</sup> 29 Del. C. § 5805(a)(2)(a) and (b).

<sup>5</sup> 29 Del. C. § 5805(a)(2).

<sup>6</sup> See, e.g., *Commission Op. Nos. 00-04 and 00-18*.

<sup>7</sup> *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd.*, No. 304 (Del., January 29, 1996).

<sup>8</sup> 29 Del. C. § 5805(b)(1).

more of CORE's vendors that are paid out of Federal grant monies administered by DPBHS. In addition, like any agency administering a grant, your State agency is responsible for overseeing the funds to assure they are spent in ways that are compatible with the grants purpose. Mr. Doppelt is DPBHS' Chief Investigator for the CORE program. Although his purpose in attending the meeting with you was to confirm the program's need for services provided by your private business, his presence also illustrates the crossover between your State job and your private business. Furthermore, even though your business would receive payments from Horizon House or another CORE vendor, it does not change the fact that the monies originated from your State agency. Under the aforementioned circumstances, you would be assisting a private enterprise (your private business) in a matter before DPBHS, your State employer. That is a conflict of interest and a violation of the State Code of Conduct.

**C. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust.<sup>9</sup>**

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation.<sup>10</sup> The Commission treats that as an appearance of impropriety standard.<sup>11</sup> The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality.<sup>12</sup> Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances.<sup>13</sup> Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment.<sup>14</sup>

You found out about the need for 'cultural brokers' through a combination of contacts that arose out of your State job and your private contacts in the community. However, having already established a conflict of interest, the Commission turned to your request for a waiver.

**D. Waivers may be granted if there would be an undue hardship on the State employee or State agency, or the literal application of the law is not necessary to serve the public purpose.<sup>15</sup>**

**(a) Undue Hardship**

A waiver may be granted if there is an "undue hardship" on the applicant or the agency.<sup>16</sup> "Undue" means "more than required" or is "excessive."<sup>17</sup> CORE is not a State agency. Ordinarily, a private entity does not qualify for a waiver. However, because CORE is funded through a grant administered by DPBHS, the Commission took into consideration Mr. Doppelt's comments regarding the need for your private business' services. According to Mr. Doppelt, the Hispanic community is generally reluctant to avail themselves of services available from the State and/or the medical community, thus categorizing them as an underserved community. Mr. Doppelt stated that the aid of a cultural broker would benefit members of the Hispanic community by acting as a guide to help them

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<sup>9</sup> 29 Del. C. § 5806(a).

<sup>10</sup> 29 Del. C. § 5802.

<sup>11</sup> *Commission Op. No. 07-35.*

<sup>12</sup> *In re Williams*, 701 A.2d 825 (Del. 1997).

<sup>13</sup> *See, e.g., Commission Op. No. 97-23 and 97-42.*

<sup>14</sup> 29 Del. C. §§ 5802(1) and 5802(3).

<sup>15</sup> 29 Del. C. § 5807(a).

<sup>16</sup> *Id.*

<sup>17</sup> *Commission Op. No. 97-18 (citing Merriam Webster's Collegiate Dictionary, p. 1290) (10<sup>th</sup> ed. 1992).*

navigate language barriers, as well as the procedures and paperwork necessary to avail themselves of available resources. As a result, your private business shares a common goal with CORE and would also advance your agency's goals. Lastly, Mr. Doppelt stated that the services provided by your private business are not usually available outside of urban areas, your business being the sole exception in Delaware. After weighing the relevant factors, the Commission decided to grant you a waiver until the end of June 2020.

**(b) Is literal application of the law necessary to serve the public purpose?**

The overall purpose of the Code of Conduct is to instill the public's confidence in its government.<sup>18</sup> The statute was designed to protect against self-dealing and its enforcement is generally the best way to serve the public purpose.

The CORE grant is set to end in June 2020. A waiver of limited length assures the public that the waiver exists for a specific purpose, thus reducing the public's concerns about self-dealing while also promoting the public's confidence in their government.

**III. CONCLUSION**

The Commission decided to grant you a waiver until the end of June 2020 to allow your business, Hispanic Personal Development, to contract with one or more of CORE's vendors to provide the services of a cultural broker when requested. This entire opinion will be published so that the public may know that the conduct prohibited by the State Code of Conduct has been reviewed and approved by the Commission.

Sincerely,

*/s/ William F. Tobin, Jr.*

William F. Tobin, Jr.  
Acting Chair

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<sup>18</sup> 29 Del. C. § 5802(1) and (2).